

**Congress of the United States**  
**Washington, DC 20515**

December 15, 2009

The Honorable Gary Locke  
Secretary  
U.S. Department of Commerce  
1401 Constitution Ave., NW  
Washington, DC 20230

Dear Secretary Locke:

We are writing to express our extreme disappointment in the New England Fishery Management Council's (Council) recent decision to significantly reduce fishing days at sea (DAS) for the Atlantic sea scallop fishery during the 2010 fishing year. The Council proposal for Framework 21 to the Atlantic scallop fishery management plan fell well below the recommendation of Council's Scientific and Statistical Committee (SSC) for long-term Acceptable Biological Catch. In fact, the Council did have the option of choosing another proposal, supported by industry, which was consistent with the scientific advice from both the SSC and the Council's Scallop Plan Development Team (PDT). However, the Council failed to do so.

Therefore, we are writing to ask that you take immediate action instructing the New England Fishery Management Council to revisit the original proposals for Framework 21 at its upcoming meeting in January so the full Council may consider the recommendations of both the Council's PDT and SSC.

The Council's proposal now under consideration by the National Marine Fisheries Service, if implemented, would reduce the scallop catch by nearly 6 million pounds from the industry supported proposal, with an estimated loss of 40 million dollars in direct revenues. When taking into account the financial impact of the lost fuel, supplies, processing and retail sales, the losses are expected to exceed \$200 million dollars.

In a recent letter to the National Marine Fisheries Service from the Massachusetts Division of Marine Fisheries written December 2, 2009, which we have enclosed for your review, Director Paul Diodati references the Council summary of the PDT meeting where it was noted that the SSC had supported a mortality level (F level) of 0.24 for the 2010 fishing year. This level of fishing would have allowed for the catch of 47 million pounds of scallops and allowed up to 38 fishing days as supported by the industry instead of the Council's approved reduction to 29 DAS. This is still very conservative given that the SSC reported that there was only a 25% chance of overfishing with an F of 0.29 in 2010 equal to a harvest of 65 million pounds of scallops (23 Sept 2009 letter from the SSC to the NEFMC).

It was upsetting to read Mr. Diodati's comment that "The SSC/PDT probability of over fishing with corresponding 2010 Fs and yield never was brought forward by the Scallop Committee at the November Council meeting. In fact, the Committee had nothing to offer on this critical issue. I believe this omission played a key role in the Council adopting an F of 0.20 with all its attendant consequences." This statement is most significant when you consider that Mr. Diodati's appointee to the Council is a voting member who felt he was not appropriately informed of this critical scientific information.

The absence of any presentation to the full Council by the Scallop Committee of the scientific recommendations of the SSC and PDT is a significant omission and warrants serious review, as I am sure you will agree, given the expectant economic losses that would result from such an unnecessarily conservative proposal.

As you know, fishery managers are supposed to take into account the scientific recommendations of the SSC in order to make informed decisions on allocation of fishery resources. However, in this instance, that clearly was not the case. It is also clear that economic impacts are not seriously considered when more conservative fishing proposals are implemented over less onerous ones despite the fact that they also meet the standards of acceptable fishing by the SSC. While the National Marine Fisheries Service representative to the Council claimed the F of 0.20 option would provide long-term benefits, in actuality, Council analyses showed the scallop industry would sacrifice approximately 6 million pounds of scallop landings in 2010, in order to gain about 4 million pounds of scallops in total over the six-year period, 2010-16.

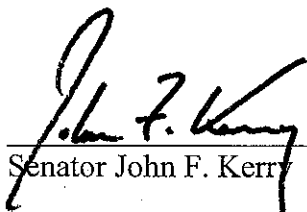
Finally, Framework 21 would reduce access area trips from 5 to 4 in order to reduce fishing effort in the mid-Atlantic waters. However, we feel that consideration should be given to allowing a fifth access area trip to the underutilized Georges Bank access areas in 2010, as well as the opening of the Northern Edge of Georges Bank Groundfish Closed Area II. The most recent fine scale surveys have shown eighty million pounds of harvestable scallops in these areas and to our knowledge the Agency has not done any recent closed area analysis to determine if these closures are even justified at this point in time.

In a time when there is high unemployment and financial hardship for many, it is incumbent upon our government to support its domestic industries to the fullest extent possible. The scallop industry has proven time and again that they are willing to make sacrifices in order to support the long-term health of this vital resource. They have allowed resource set asides for critical research, participated cooperatively with government and University scientists, and actively participated in the management process.

Therefore, we again ask that you direct the Council to reconsider its proposal for the 2010 fishing year while ensuring that each and every Council member is fully informed of the scientific recommendations of the SSC and PDT. We also ask that you consider the opening of underutilized scallop fishing grounds to mitigate reduced open area fishing and target abundant and harvestable scallop resource. If the Council is not able to revisit

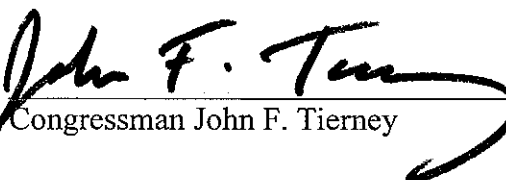
its decision, then we would request that you take action to ensure an appropriate outcome.  
Thank you for your time and consideration. We look forward to your response.

Sincerely,

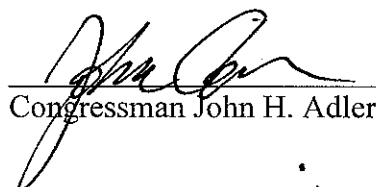
  
Senator John F. Kerry

  
Congressman Barney Frank

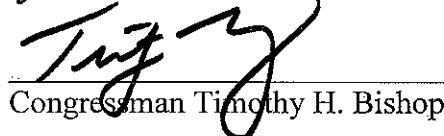
  
Senator Charles E. Schumer

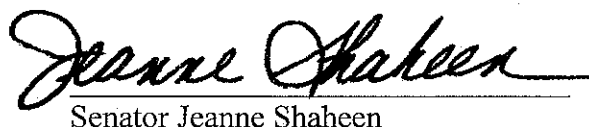
  
Congressman John F. Tierney

  
Senator Paul G. Kirk, Jr

  
Congressman John H. Adler

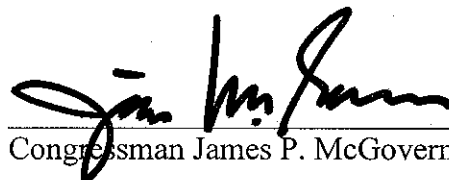
  
Senator Kirsten E. Gillibrand

  
Congressman Timothy H. Bishop

  
Senator Jeanne Shaheen

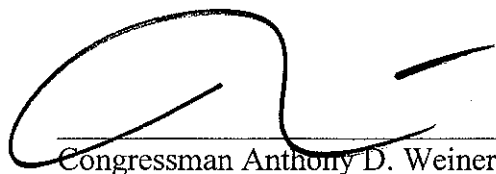
  
Congressman Michael E. Capuano

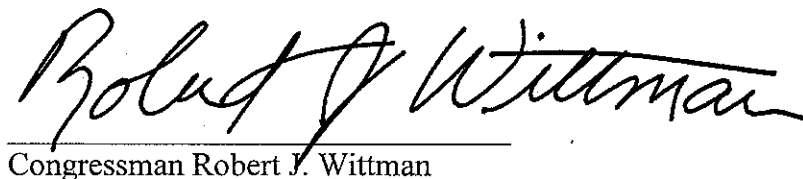
  
Congressman Joe Courtney

  
Congressman James P. McGovern

  
Congressman Walter B. Jones

  
Congressman Frank A. LoBiondo

  
Congressman Anthony D. Weiner

  
Congressman Robert J. Wittman

Frank Pallone Jr. Carol Shea-Porter  
Congressman Frank Pallone Jr. Congresswoman Carol Shea-Porter



Paul J. Diodati  
Director

*Commonwealth of Massachusetts*  
**Division of Marine Fisheries**

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December 2, 2009

Ms. Patricia Kurkul  
Regional Administrator, Northeast Region  
National Marine Fisheries Service  
55 Great Republic Drive  
Gloucester, MA 01930-2276

Dear Ms. Kurkul: 

By now you are well aware of the furor created by the New England Fishery Management Council's recent decision to allocate far fewer days to the limited access sea scallop fishery for the next fishing year. Through Framework Adjustment 21 to the Atlantic Scallop Fishery Management Plan we now intend to reduce days-at-sea from 37 to 29 – a 22% decrease. After reflecting on Council discussions regarding the decrease in Days-At-Sea (DAS) and reviewing documents not discussed at the Council meeting, I conclude that important scientific advice was forgotten. I request you consider that advice during your review of Framework 21 in preparation for its implementation next year.

In July Council correspondence with the Science & Statistical Committee (SSC), Paul Howard indicated: *"Full implementation of ACLs is not required in the Scallop FMP until 2011 because overfishing is not occurring, but the Council is still required to include a specific ABC for 2010, based on SSC recommendations. Therefore, the PDT will present an estimate of ABC for 2010, based on the same quantitative approach the SSC is reviewing for Amendment 15."* Being said about four months ago, this very relevant description of what was to come regarding Plan Development Team (PDT) and SSC involvement in providing a 2010 Allowable Biological Catch (ABC) was omitted and, therefore, had no influence on the November Council decision to set the 2010 ABC at a fishing mortality of 0.20 (29 DAS).

After reviewing Framework 21 development with Council and my staff and referencing PDT and SSC documents, we conclude the Council did not refer to PDT/SSC findings; consequently, 2010 DAS are far too restrictive with unnecessary economic loss.

I refer you to a Council summary of the PDT August 12 meeting. On pages 7 & 8 ("Summary of SSC decisions from 8/11/09 meeting") it reads: *"Staff briefed the PDT on the SSC meeting held the previous day. In general the SSC supported using the 25% chance of overfishing as the ABC control rule and was very complimentary of the work done by the PDT. It was accepted that this be used to set ABC and noted that the 25% chance fell between the 10-40% guidelines given in draft guidance documents NMFS is working on for implementing ACLs. The PDT reviewed the results about management uncertainty and support consideration of an ACT that is set at an F level with 25% chance of exceeding ABC. This happens to be an F of 0.24 for 2010 (my underlined emphasis)..."*

Then in a September 23 memo to Paul Howard from SSC chairman Steve Cadrin, the Council learned that the SSC *"endorses the proposal by the Scallop PDT and other conventions of risk-based harvest rules that ABC be based on 25% probability of overfishing. Analyses of uncertainty indicate that a 25% risk of overfishing is associated with less than 1% loss in yield relative to  $F_{max}$ ."* Steve provided a table with alternative projections of fishing mortality and yield at alternative probabilities of overfishing. That table depicted a 25% chance of overfishing with a 2010 F of 0.29 with a 2010 yield of 29,500 mt. He ended with a SSC recommendation: *"The SSC recommends that Acceptable Biological Catch of scallops in 2010 should be 29,578 mt for the overall fishery."*

The SSC/PDT probability of overfishing with corresponding 2010 Fs and yield never was brought forward by the Scallop Committee at the November Council meeting. In fact, the Committee had nothing to offer on this critical issue. I believe this omission played a key role in the Council adopting an F of 0.20 with all its attendant consequences. For this reason, I request you take appropriate steps to account for PDT and SSC analyses of uncertainty and that the 2010 ABC be set at  $F = 0.24$ , providing an even lower probability of overfishing, i.e., less than 20%.

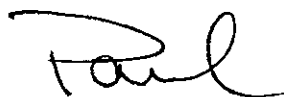
I realize your modifying the Council's decision will present some scheduling and framework implementation problems. Nevertheless, it is justified because the Council unintentionally failed to use PDT and SSC advice.

If those recommendations had called for an F lower than 0.20, I would still urge you to consider those recommendations developed with critical input from the Northeast Fisheries Science Center. I suspect you would feel compelled to do so. Perhaps, the Council can be requested to revisit this issue at its next meeting even though that meeting is in January.

Considering the success of sea scallop management and the tremendous support of the fishing industry for management and science, I feel your acting to correct an unfortunate situation caused by a Council misunderstanding about technical/scientific recommendations is warranted. I'm sure you will find yourself and the National Marine Fisheries Service congratulated by an appreciative, extremely valuable sea scallop fishing industry.

Pat, thanks for your attention to this matter.

Sincerely,



Paul J. Diodati  
Director

Cc: John Pappalardo, NEFMC  
Paul Howard, NEFMC  
Richard Robins, MAFMC  
Daniel Furlong, MAFMC  
Steve Cadrin, NEFMC SSC